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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,716	08/08/2006	Francois Le Maner	Q96470	1158
23373 7590 01/11/2010 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER BOMBERG, KENNETH				
ART UNIT 3754		PAPER NUMBER		
NOTIFICATION DATE 01/11/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/588,716

Applicant(s)

LE MANER ET AL.

Examiner

KENNETH BOMBERG

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8 and 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 9, 2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-4, 6-8, and 10-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Reference to Claims 1, 14, 17, and 19

These claims are not clearly understood read in light of the disclosure. The claims require the "contact and shoulder surfaces being substantially radial". The specification states on page 4, line 32 to page 5, line 6, "In a preferred embodiment, the contact surface 115 projects inwards in substantially radial manner, and the shoulder surface 130 forms a corresponding external hook that is also substantially radial."

Specifically, it is not clear if the claims are describing a cross sectional profile of the shoulder and contact surfaces having a “radial” (i.e. rounded) profile as depicted in Fig. 2; or that the shoulder and contact surfaces project in respective substantially radially inward and outward directions relative to the ring and neck (it is noted that as depicted in Fig. 2, the radial projections are not perpendicular to the container and fastener ring axis).

In Reference to Claim 2

In line 2, “at least one elastically deformable lip” has confusing antecedent basis in claim 1, with “at least one deformable lip”

In Reference to Claim 15

In lines 1-2, “the axially-projecting portion” lacks antecedent basis in claim 14.

In Reference to Claims 17 and 19

The scope of these claims is not understood as it is unclear how they further limit claims 14 and 1 from which they depend. Specifically, claims 14 and 1 already require “contact and shoulder surfaces being substantially radial”.

In Reference to Claim 18

In line 2, “the two deformable lips” lacks antecedent basis in claim 1.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 6-8, 11-14, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 3,167,217 to Corsette et al. (Corsette '217).

In Reference to Claims 1, 2, 7, 14, 17, and 19

A fluid dispenser device (container with closure 10) comprising:

a receptacle (bottle) comprising a neck (neck) and fluid to be dispensed (col. 2, lines 35-37);

a dispenser member (dispensing pump; col. 2, lines 11-13); and

a fastener ring (container closure 10) for fastening the dispenser member on the neck of the receptacle, the fastener ring comprising a deformable (the entire closure /cap is a "resilient material"; col. 2, lines 30-32) sealing member (annular rib 10b) configured to co-operate with the neck of the receptacle so as to fasten the dispenser member in leaktight manner on the receptacle (col. 2, lines 37-39); wherein the sealing member comprises at least one elastically deformable lip (the rib 10b is a "deformable lip"); and wherein the fastener ring includes a snap-fastener (radially inwardly projecting shoulder 10a) comprising a contact surface configured to co-operate with a shoulder surface of the neck of the receptacle, so as to fasten the dispenser member on the receptacle, the contact and shoulder surfaces being substantially radial (col. 2, lines 33-37).

In Reference to Claims 3 and 8

The sealing means (elastically deformable lip; annular rib 10b) is made integrally with the fastening ring (10) (see col. 2, lines 37-39) and fastens the dispenser member in

a leaktight manner on the receptacle.

In Reference to Claim 6

The fastener ring (10) is made integrally with a turret that is fastened to the dispenser member (see annular formation 13).

In Reference to Claim 11

The fastening ring includes a resilient sealing means (annular rib 10b) and resilient inwardly projecting shoulder (10a) would compensate for dimensional variations in the neck of the receptacle.

In Reference to Claim 12-13

The dispenser member is a pump (dispensing pump; col. 2, lines 11-13).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 4 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over US Patent No. 3,167,217 to Corsette et al. (Corsette '217).

The sealing means injection molded onto the fastener ring is a product by process recitation. Corsette '217 teaches a product that is substantially identical to that which is claimed. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (see MPEP 2113).

9. Claims 1, 2, 7, 10, 14-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 3,248,021 to Corsette et al. (Corsette '021) in view of US Patent No. 3,167,217 to Corsette et al. (Corsette '217).

Corsette '021 teaches:

In Reference to Claims 1, 2, 7, 14, 17, and 19

A fluid dispenser device (container with collar 14) comprising:

a receptacle (container) comprising a neck (neck 26) and fluid to be dispensed (Fig. 1);

a dispenser member (dispenser (pump)); and

a fastener ring (14) for fastening the dispenser member on the neck of the receptacle, the fastener ring comprising a deformable sealing member (V-shaped groove 75) configured to co-operate with the neck of the receptacle so as to fasten the dispenser member in leaktight manner on the receptacle (col. 2, lines 64); wherein the sealing member comprises at least one elastically deformable lip (outer and inner walls defining groove 75); and wherein the fastener ring includes a snap-fastener (protuberance 22) comprising a contact surface configured to co-operate with a shoulder surface (annular rib 25) of the neck of the receptacle (see col. 2, lines 29-33), so as to fasten the dispenser member on the receptacle.

Corsette '021 does not teach (in the manner it is argued by applicant / although broadly interpreted Corsette '021 would also teach):

The contact and shoulder surfaces being substantially radial which is taught by Corsette '217 (col. 2, lines 33-37).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated the arrangement where the contact and shoulder surfaces are substantially radially extending of Corsette '217 into the fluid dispenser fastener of Corsette '021 since Corsette '217 teaches that this type of configuration is a known arrangement for the surfaces in the art.

In Reference to Claims 10, 16 and 18

The neck (26) has an axially projecting portion (lip of the container neck; col. 2, lines 43-37) cooperating with the sealing means (75). In Fig. 1, the lip can be seen

having a rounded edge profile cooperating with the outer and inner walls defining the sealing means (groove 75) forming a leak-tight contact zone sloping at least in part.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corsette '021 and '217 as applied to claim 14 above and further in view of US Patent No. 3,428,208 to Kosar (Kosar).

Corsette '021 as modified by 'Corsette '217 teaches a fluid dispenser device according to claim 14 (see rejection of claim 14 above), but does not teach wherein the axially-projecting portion is an annular portion axially extending from a flat horizontal annular rim portion of the neck. In Fig. 13 and col. 3, lines 40-44, Kosar teaches an axially-projecting portion is an annular portion axially extending from a flat horizontal annular rim portion of the neck (bead or convex end of upright wall 1e).

It would have been obvious to one having ordinary skill in the art at the time of the invention to have substituted the annular portion axially extending from a flat horizontal annular rim portion of the neck (as taught by Kosar in Fig. 13) for the axially projecting portion (annular lip of the container neck) of Corsette ('021 as modified by '217), since Kosar teaches that the claimed arrangement is known alternative closure seal.

Response to Arguments

11. Applicant's arguments with respect to claims 1-4, 6-8, and 10-19 have been considered but are moot in view of the new ground(s) of rejection.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KENNETH BOMBERG whose telephone number is (571)272-4922. The examiner can normally be reached on Monday-Thursday and alternative Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Kenneth Bomberg/
Primary Examiner, Art Unit 3754